

R E M A R K S

Claims 1 - 8 are currently pending. In the instant Office Action, the Examiner raised two issues, which are set forth by number in the order they are herein addressed:

- 1) Claims 1 and 5 stand rejected under 35 U.S.C. §102(b), as allegedly anticipated by Vidovic (U.S. Patent No. 4,254,483); and
- 2) Claims 2 - 4 and 6 - 8 stand rejected under 35 U.S.C. §103(a), as allegedly unpatentable over Vidovic, in view of Armstrong (U.S. Patent No. 4,554,411).

Applicant has amended Claims 1 and 5, in order to further the prosecution of the present application and Applicant's business interests, yet without acquiescing to the Examiner's arguments. Applicant reserves the right to prosecute the original, similar, or broader claims in one or more future application(s). The amendment does not introduce new matter and is not intended to narrow the scope of any of the claims within the meaning of *Festo*.¹

1. The Claims Are Novel Over Vidovic

The Examiner has rejected Claims 1 and 5 under 35 U.S.C. §102(b), as allegedly anticipated by Vidovic (U.S. Patent No. 4,254,483). The Examiner states:

[i]n reference to claims 1, 5, Vidovic discloses the claimed alarm panel connected to an event sensor via cable, the cable comprising two conductors, and circuitry associated with the conductors for providing current to the event sensor and detecting changes in the current to indicate tampering at the sensor, severing of the cable, and/or an event detected by the sensor, which is met by an ultrasonic intruder alarm comprising a processor 12 (control panel) connected to a plurality of receiver heads 18, used to detect a disturbance within an ultrasonic field (event sensor); a tamper detector, to detect tampering of one of the receiving heads 18 or of the cable; and a cut cable detector 110, used to determine whether the cable 20 has been cut (col. 8, lines 35-65) (Office Action, page 2).

Applicant must respectfully disagree. Nonetheless, Applicant has amended Claims 1 and 5, in order to further the prosecution of the present application and Applicant's business interests, yet without acquiescing to the Examiner's arguments, and while reserving the right to prosecute the original, similar, or broader Claims in one or more future application(s).

¹ *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 122 S.Ct. 1831, 1838, 62 USPQ2d 1705, 1710 (2002).

Specifically, Applicant has amended Claim 1 to recite that "the event sensor comprises **only two terminals**, and the circuitry is associated with said conductors for providing current to the event sensor through said **two terminals** and detecting changes in said current through said **two terminals**, to indicate tampering at the sensor, severing of the cable and/or an event detected by the sensor." Support for this amendment is found for instance in Figure 5, which depicts modified circuitry of an event sensor having only two terminals (upper right hand portion of the schematic), "for use with a two-conductor cable" (Specification, at page 4, lines 2-4). In addition, Applicant has amended Claim 5 to recite a "cable comprising **only two conductors**" for connecting an alarm panel to an event sensor. Support for this amendment is found for instance in Figure 2A, which depicts "a segment of a two-conductor cable" (Specification, at page 3, lines 18 and 19).

In contrast, Vidovic provides an invention having "at least one remotely mountable transmitting head, at least one remotely mountable receiving head and a processor connected to the receiving and transmitting heads by a *five-wire cable*" (*See*, '483, at sentence bridging columns 1 and 2, emphasis added). Specifically, Figure 1 of Vidovic clearly depicts a cable 20 having *five conductors* or wires (labeled 88, 118, 90, 170 and 174) for connecting the processor 12 to the transmitter 16 and the receiver 18. In addition, Figure 2 of Vidovic clearly depicts that both the processor (alarm panel) and the receiver (event sensor) consist of *five terminals* for transmission of electrical current through the five conductor cable. Thus, the claimed invention having an event sensor with only two terminals, or a cable having only two conductors is clearly distinct from that of Vidovic having a processor with five terminals and a cable with five conductors. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

2. The Claims Are Nonobvious Over Vidovic in View of Armstrong

The Examiner has rejected Claims 2-4 and 6-8 under 35 U.S.C. §103(a), as allegedly unpatentable over Vidovic (U.S. Patent No. 4,254,483), in view of Armstrong (U.S. Patent No. 4,554,411). In particular, the Examiner relies upon the ultrasonic alarm system of Vidovic, the six-wire cable of Armstrong, and unsupported conclusory statements about the prior art to reject the claims (Office Action, pages 3-5). However, the Examiner is reminded that a *prima facie* case of obviousness requires: (a) some suggestion or motivation to

combine or modify the reference teachings, (b) a reasonable expectation of success, and (c) a teaching or suggestion of all claim limitations (MPEP, 2143). Applicant respectfully submits that the Examiner has failed to establish one or more of these elements of a *prima facie* case of obviousness, in the rejections of Claims 2-4 and 6-8.

In the first place, rejected dependent Claims 2 and 6 require a **two-conductor cable**. The Examiner admits that "Vidovic does not specifically disclose the claimed two-conductor cable" (Office Action, page 3). Moreover, as discussed above, the cable 20 connecting the processor 12 to the receiver heads 18 of Vidovic is not equivalent to the cable of the claims, as Vidovic's cable comprises *five conductors* (wires labeled 88, 118, 90, 170 and 174). Similarly, the teachings of Armstrong do not remedy this deficiency, as Armstrong is relied upon for a *six wire cable* 104.

Secondly, rejected Claims 3 and 7 depend upon Claims 2 and 6, and thus require a **two-conductor cable**. In addition, rejected Claims 3 and 7 require elements that the Examiner admits are not provided by the cited art. Specifically, the Examiner states that:

"Vidovic does not specifically disclose the claimed shorting of the cable providing a maximum current state, an event detection by the sensor providing a medium current state, normal operating conditions providing a low current state, a severed cable or tampering with the event sensor providing a very low or no current state ... Since Vidovic discloses a processor used for detecting various signals ... it would have been obvious to one of ordinary skill in the art at the time of the invention to use any level of current or voltage provided to represent a tamper, event sensor, or cut cable, to ensure that the control panel will issue the correct alarm" (Office Action, page 4, emphasis added).

Applicant respectfully disagrees, and further asserts that it is the circuitry of the claimed invention that transmits the appropriate signal to the control panel. Specifically, Claims 3 and 7 further require that "**circuitry** reacts to the current state of the conductors to provide appropriate conditions to each conductor of said six-conductor cable for recognition by said alarm control panel." Neither Vidovic nor Armstrong provide multiple current states let alone the circuitry for their detection with the claimed cables.

Moreover, Claims 4 and 8 require a **passive infra-red detector**. Again, the Examiner admits although:

Vidovic does not specifically disclose the claimed even[t] sensor is a passive infra-red detector, he does disclose the head receivers 18 comprised of ultrasonic sensors (col. 2, lines 57-68). Since it is well known in the art to use

various types of sensors to detect intrusion, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a passive infra-red detector with or in place of Vidovic's sensors, as a means to provide a warning signal upon determining a disturbance within a specified field" (Office Action, pages 4 and 5).

Applicant must respectfully disagree. The Examiner's entire rejection rests on a factually unsupported (and insupportable) conclusory statement. In making this obviousness rejection, the Examiner merely states since it was well known in the art to use various types of sensors to detect intrusion, it would have been obvious to use a passive infrared detector in place of the prior art sensor. This statement is conclusory because it merely recites that a sensor is taught in the prior art reference, and that it is well known that such sensors can be replaced.

The Federal Circuit has expressly forbidden this hindsight-based approach.

Specifically, the Federal Circuit held that:

[t]he factual inquiry whether to combine references must be thorough and searching. It must be based on **objective evidence** of record. **This precedent has been reinforced in myriad decisions, and cannot be dispensed with.**²

Indeed, the Federal Circuit has made it clear that "[b]road, **conclusory** statements regarding the teachings of multiple references, standing alone, are not 'evidence.'"³ Thus, the Examiner's conclusory motivation statement falls well short of the standards established by the Federal Circuit. In particular, the Examiner has provided no rationale, other than that "it is well known in the art," as to why a person of ordinary skill in the art would be motivated substitute an infrared sensor for sensor of Vidovic. Vidovic certainly does not suggest that this type of modification can be made or that its alarm system should incorporate any other sensors than those disclosed. Given this fact, it is apparent that the Examiner has applied hindsight reconstruction to reject the claims. This is the situation that the above standards are meant to prevent:

The Board did not . . . explain what specific understanding or technological principal within the knowledge of one of ordinary skill in the art would have suggested the combination. **Instead, the Board merely invoked the high level of skill in the art.** If such a rote invocation could suffice to supply a motivation to combine, the more sophisticated scientific fields would rarely, if

² *In re Lee*, 277 F.3d 1338, 1344 (Fed. Cir. 2002); internal citations omitted; emphasis added.

³ *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999); emphasis added.

ever, experience a patentable technological advance. Instead, in complex scientific fields, the Board could routinely identify the prior art elements in an application, invoke the lofty level of skill, and rest its case for rejection. To counter this potential weakness in the obviousness construct, the suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness.⁴

The instant facts closely parallel the facts of *In re Rouffet*. The Examiner has pointed to nothing in Vidovic that indicates that infrared sensors can be used in place of the disclosed sensors and has merely invoked what is "known in the art." This is not the factually supported "objective evidence of record" as required by the Federal Circuit. At best, it is the non-objective supposition of the Examiner with absolutely no factual support. Accordingly, Applicant respectfully submits that the Examiner has failed to meet the Federal Circuit standards for motivation to modify or combine reference(s).

Lastly, rejected Claims 2-4 depend upon independent Claim 1, and rejected Claims 6-8 depend upon independent Claim 5, which read upon an event sensor **comprising only two terminals** and a cable **comprising only two conductors**, respectively. As discussed above, these limitations distinguish the pending claims from the system of Vidovic. The teachings of Armstrong do not remedy this deficiency, as Armstrong also does not provide an event sensor having only two terminals and/or a cable having only two conductors.

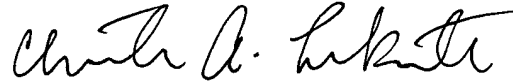
As a *prima facie* case of obviousness has not been established, Applicant respectfully requests that this rejection be withdrawn.

⁴ *In re Rouffet*, 47 USPQ2d 1453 (Fed. Cir. 1998); emphasis added.

CONCLUSION

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. However, should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicant encourages the Examiner to call the undersigned collect.

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